



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, as amended**

- and -

**IN THE MATTER OF
BIOVAIL CORPORATION, EUGENE N. MELNYK,
BRIAN H. CROMBIE, JOHN R. MISZUK and KENNETH G. HOWLING**

**ORDER
(Sections 127 and 127.1)**

WHEREAS on March 24, 2008, the Ontario Securities Commission (the “Commission”) issued a Notice of Hearing and related Statement of Allegations (the “Notice of Hearing”) against Biovail Corporation, Eugene N. Melnyk (“Melnyk”), Brian H. Crombie, John R. Miszuk and Kenneth G. Howling;

AND WHEREAS on September 30, 2010, the Commission issued its Reasons and Decision relating to Melnyk’s role in relation to the matters set out in the Notice of Hearing (the “Merits Reasons”);

AND WHEREAS by Orders dated November 2, 2010 and January 26, 2011, the Commission announced that a sanctions hearing relating to Melnyk would be scheduled for May 4, 2011;

UPON being informed that Melnyk has provided an undertaking to Staff of the Commission stating that:

- (a) he will withdraw the appeal that he has filed relating to the Merits Reasons and he will not appeal this Order;
- (b) he will not issue a press release in relation to this matter; and

(c) he will not make any public statement inconsistent with this Order;

UPON hearing submissions from counsel for Melnyk and for Staff of the Commission jointly recommending the sanctions set out below and the issue of this Order;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED that:

1. Melnyk is reprimanded;
2. Melnyk is prohibited from acting as an officer or director of a reporting issuer (as defined in the *Securities Act*), or of a subsidiary of a reporting issuer, for a period of 5 years from the date of this Order;
3. Melnyk shall pay \$565,000.00 in respect of a portion of the costs of the investigation and hearing in relation to this matter within 30 days of this Order;
4. For greater clarity, and in light of the preliminary prospectus that was filed with the Commission on April 15, 2011 relating to J5 Acquisition Corp. in which Melnyk is expected to hold approximately 62.2% of the common shares upon completion of the proposed offering:
 - (i) in this Order, “subsidiary” has the meaning given to that term in National Instrument 45-106 *Prospectus and Registration Exemptions*, namely, an issuer that is controlled directly or indirectly by another issuer and includes a subsidiary of that issuer; and
 - (ii) for a period of five years from the date of this Order, Melnyk will not be permitted, directly or indirectly, to
 - (a) act as an integral part of the mind and management of a reporting issuer or a subsidiary of a reporting issuer (each a Specified Issuer), or perform functions similar to those normally performed by an officer or director of a Specified

Issuer, including: appointing officers or participating in any meeting of a board, or any committee thereof, in respect of proposing or nominating directors of a Specified Issuer; providing instructions or direction to management of a Specified Issuer or to any legal or financial advisors of any Specified Issuer; having signing authority for a Specified Issuer including without limitation signing authority over any bank or other accounts of a Specified Issuer; and hiring or supervising key staff of a Specified Issuer or participation in decisions relating to executive compensation;

- (b) be involved in any of the matters referred to in section 3.4 (Board Mandate) of National Policy 58-201 *Corporate Governance Guidelines* in relation to the board of a Specified Issuer;
- (c) make any recommendations to, participate in any discussions with or attempt in any way to influence management or the board of a Specified Issuer in relation to
 - 1. compliance with any obligations that may be applicable to a Specified Issuer under Ontario securities law; and
 - 2. preparation of any disclosure documents required to be filed by a Specified Issuer under Ontario securities law except as required by law or in respect of any disclosure describing Melnyk personally or describing his relationship to a Specified Issuer;
- (d) enter into any oral or written retainer agreement as a consultant or advisor to a Specified Issuer;
- (e) play a significant role (other than as an investor) in the raising of financing by, or the solicitation of investments in a Specified Issuer; and

- (f) play a significant role in the business of, including playing a significant role in negotiating on the behalf of, a Specified Issuer.

DATED at Toronto this 5th day of May, 2011.

“James E. A. Turner”

James E. A. Turner

“Paulette L. Kennedy”

Paulette L. Kennedy

“Mary G. Condon”

Mary G. Condon